HUMAN RIGHTS TRIBUNAL OF ONTARIO

Annual Report
2006-2007
2007-2008

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Message from the Chair

Greetings

The past two years have been a period of transition for the Tribunal. In the spring of 2006, the government introduced legislation to reform the enforcement procedures of the Human Rights Code. On June 30, 2008, the *Human Rights Code Amendment Act 2006* will come into force.

The implementation of these reforms presented a significant challenge for the Tribunal. It has meant getting ready for an expected twenty-fold increase in our annual caseload, from the 150 Commission referred complaints we have traditionally received, to upwards of 3,000 applications which will be filed by individuals under the new system. And, in the first few years of the new system, we will be responsible for the several thousand complaints which remain outstanding at the Commission and that may be transferred to the Tribunal by individual complainants.

Even with the challenges, however, we have looked at the reforms as an opportunity – an opportunity to enhance access to justice, an opportunity to build a fair and expeditious dispute resolution process, and an opportunity to build an organization which is responsive to the needs of its stakeholder community. In other words, the past two years have not just been about getting bigger in order to meet a larger caseload. Instead, our approach has been to build a "new tribunal", one which incorporates best practices in the administrative justice sector and seeks to maintain the highest standards of professionalism and integrity.

The Tribunal has benefited greatly from the contributions of its staff (both permanent and transition), and its full-time Vice-Chairs and part- time Members. As well, the Attorney General and staff at the Ministry have been extremely supportive of our efforts to establish the new tribunal, while at the same time, respecting the status of the Tribunal as an independent, quasi-judicial agency.

Finally, I am sincerely grateful to all the members of the stakeholder community who participated in our consultatitive process. The active and lively debates were critical to the development of the new Tribunal. We have been fortunate to have had input from a wide range of interests and perspectives. All those who contributed shared a common objective of ensuring the Tribunal's procedures are open, transparent and accessible. I extend my thanks to all those who shared their time and expertise. Your thoughts and insights have been invaluable.

Sincerely,
Michael Gottheil

Background

Ontario's first *Human Rights Code* came into force in 1962. Under this legislation, complaints of discrimination were heard by *ad hoc* boards of inquiry appointed by the Minister of Labour. This system evolved over time and, in 1995, the Board of Inquiry was established as a permanent, stand-alone tribunal. In 2002, the Board of Inquiry was continued under the name – Human Rights Tribunal of Ontario/ Tribunal des droits de la personne de l'Ontario (HRTO). In November 2003, the Ministry of the Attorney General took over responsibility for the HRTO from the Ministry of Citizenship.

The *Human Rights Code Amendment Act, 2006* (Bill 107) received Royal Assent in December 2006. With its proclamation on June 30, 2008, this legislation will fundamentally change the way human rights are enforced in Ontario, with the HRTO taking on a greatly expanded role. All claims of discrimination under the *Human Rights Code* will be filed directly with the HRTO.

During the period of this Annual Report, the HRTO has continued to meet its current mandate, but has spent a great deal of time and effort preparing for the launch of Ontario's new human rights system on June 30, 2008.

Mandate

The Tribunal's mandate is to resolve applications brought under the Ontario *Human Rights Code*. The Tribunal has adopted the following Core Values and Mission Statement:

Core Values

The Core Values inform the Tribunal's approach to its mandate. They set the foundation for the rules and policies and how those rules and policies will be applied. The Core Values are:

- Accessibility, both physically and functionally.
- Fairness: the process will ensure that decisions are based on the facts, the law and the merits of the case.
- Transparency: Tribunal procedures will be clearly established and decisions will be made in an open way, with substantive reasons that are clear, concise and understandable.
- Timeliness: resolutions will be reached and decisions made in a timely way, so that delays do not frustrate the objects of the *Code* - to prevent

discrimination and if a violation is found, to provide effective, meaningful remedies.

- The Opportunity to be Heard: a complaint that is within the jurisdiction of the Tribunal will not be finally determined without giving the parties an opportunity to make oral submissions.

Mission

The Tribunal's statement of its mission provides:

- The Tribunal will play its role as a pillar in the human rights system by providing expeditious and accessible processes to assist the parties to resolve complaints brought before the Tribunal, and to determine complaints where the parties are unable to resolve them.
- The Tribunal will be activist to seek a fair, just and expeditious resolution of the merits of an application.
- The Tribunal will provide and promote meaningful and effective public interest remedies in appropriate cases. The Tribunal will not bar settlements where parties freely desire to resolve their dispute.
- The Tribunal will seek to maintain the highest standards of integrity and quality of work.
- The Tribunal will strive for consistency to enhance the parties' reasonable expectations of Tribunal policy and process, but will remain responsive to differing cases and party needs, and to an evolving understanding of human rights and discrimination.
- The Tribunal will strive to promote a clear understanding of its work among the general public. The Tribunal will work to be responsive to the needs of its stakeholder communities.

Functions of the HRTO

The purpose of the *Code* is to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination based on the enumerated grounds set out in the *Code*. The *Code* has primacy over other Ontario statutes and is treated by the courts as quasi-constitutional in nature. Two independent organizations – the Ontario Human Rights Commission (the Commission) and the HRTO – continue to enforce the *Code*.

The Commission investigates complaints filed by individuals who believe their rights under the *Code* have been infringed. Where it considers appropriate, the Commission may refer a complaint to the Tribunal for hearing.

The HRTO is the independent, quasi-judicial body that hears and decides complaints under the *Code*. It has jurisdiction to determine all questions of fact or law that come before it. Its decisions may be the subject of judicial review by the Divisional Court. The HRTO also mediates cases on the consent of all parties. Proceedings before the HRTO are governed by Rules of Procedures established under the authority of the *Code*.

Once a complaint is referred to the HRTO, the hearing process begins within 30 days with an Initial Conference Call with the parties and the Chair, a Vice-Chair or a Member of the Tribunal.

At a hearing, the parties are: the Commission, which has carriage of the complaint; the Complainant; any person alleged to be responsible for the infringement (the Respondent); and any other person added as party by the HRTO. The Tribunal determines whether a complainant's rights under the *Code* have been infringed, who infringed the right, and, where a violation of the *Code* has been found, the appropriate remedy. The *Statutory Powers Procedure Act* applies to hearings before the Tribunal.

Mediation

The Tribunal offers the parties the opportunity to participate in mediation as a way to resolve their dispute. The mediation process is designed to explore the possibility of settlement of some or all of the issues in the case. Mediation is conducted by a Tribunal Vice-Chair or Member who has expertise in human rights and dispute resolution practices. In keeping with the Tribunal's Core Value of providing parties with an opportunity to be heard, mediation is conducted with a rights-based, active listening approach. Mediation remains voluntary and parties are entitled to move expeditiously to an adjudication.

Adjudication

Not every dispute will be resolved through mediation. Where the parties are unable to reach a settlement, the complaint proceeds to a hearing before a Tribunal adjudicator. The adjudicator hears the parties' evidence and submissions and issues a decision. Reasoned decisions based on the particular facts and relevant law provide guidance about human rights in Ontario to the community.

Adjudicators assigned to a case typically convene Case Management Pre-Hearing Conferences to prepare the case for hearing. Preliminary motions can

be identified and decided before the hearing starts to ensure that the hearing is run effectively.

To increase access to our process and decisions, the HRTO provides all of its decisions and *Rules of Practice* to Quicklaw, the Canadian Human Rights Reporter, CanLII (a non-profit organization managed by the Federation of Law Societies of Canada), the Workplace Tribunals' Library at 505 University Avenue, 7th floor (which is open to the public), many public libraries, and to the public upon request.

Case Load for 2006-2008

	2006-2007	**2007-2008**
Number of active complaints at the start of the year[1]	416	419
Number of new complaints received during the year	154	271
Number of new complaints by social area:		
Accommodation	11 (7.1%)	5 (1.9%)
Employment	103 (66.9%)	126 (46.5%)
Contract	0	1 (0.4%)
Facilities	0	2 (0.7%)
Services	40 (26.0%)	136 (50.2%)
Other	0	1
Number of new complaints by ground:		
Age	6	11
Ancestry	6	7
Citizenship	2	1
Colour	9	29
Creed	3	11
Disability	61	160
Ethnic Origin	15	10

[1] The number for both years includes 234 complaints involving educational services for individuals with autism.

Family Status	8	10
Marital Status	5	3
Place of Origin	8	18
Race	22	33
Reprisal	17	30
Sex	33	41
Sexual Orientation	9	10
Number of new complaints that went to mediation	120	149
Number of new complaints that went to hearing	40	47
Number of new complaints resolved by settlement	48	46
Total number of complaints resolved by settlement	135	134
Number of new complaints closed by decision	0	3
Total number of complaints closed by decision	16	19
Closed by court order	0	1
Total number of complaints closed	151	154
Number of complaints on hand at the end of the year	419	536
Number of appeals filed	4	2
Number of applications for judicial review filed	1	2

Organizational Structure

The HRTO has a small staff to support its work. At the end of fiscal 2006-2007, there was a staff of five: Tribunal Counsel; Registrar/Chief Administrative Officer; Coordinator of Administrative Services; Hearings Officer; and Secretary to the Chair. By the end of fiscal 2007-2008, there were nine staff members: Tribunal Counsel, Registrar/Chief Administrative Officer; Coordinator of Administrative Services; Hearings Officer; Secretary to the Chair; Secretary to the Tribunal; Case Processing Coordinators (2); and Adjudicative Support Assistant.

In anticipation on an increasing case load, the HRTO recruited additional full-time adjudicators by the end of 2007-2008, bringing the complement to nine full-time Vice-Chairs and 12 part-time Members.

The new adjudicators were appointed through a competitive process using clear selection criteria for assessing candidates, including:

- experience, knowledge or training with respect to human rights law and issues;
- aptitude for impartial adjudication;
- aptitude for applying the alternative adjudicative practices and procedures that may be set out in the HRTO rules.

The HRTO has developed job descriptions, competency models, a code of conduct and other tools to recruit adjudicators for the new organization.

Attached as Appendix 1 and Appendix 2 are the HRTO's organizational charts for 2006-2007 and 2007-2008. Attached as Appendix 3 and Appendix 4 are the HRTO's lists of Vice-Chairs and Members and their terms of appointment.

Program Highlights and Activities

This has been a period of transition for the HRTO. Amendments to the *Code*, which will come into effect on June 30, 2008, are based on a "direct access" model. Individuals claiming discrimination under the *Human Rights Code* will file applications directly with the HRTO. The HRTO's expanded mandate will require a significantly larger and more sophisticated organization. It will grow from a small tribunal handling approximately 150 new cases annually to a large, high profile tribunal receiving an estimated 3,000 new applications annually. The HRTO will continue to hear complaints referred by the Ontario Human Rights Commission through December 2008, and will also deal with applications filed, before June 30, 2009 by individuals who have an unresolved complaint with the Commission and want to pursue the matter before the Tribunal.

In March 2007, a Transition Team of experienced public servants was established to prepare the HRTO for its new legislative mandate, while HRTO staff continued to meet the current workload. The Transition Team worked under the direction of the Chair to build a new dispute resolution model, consistent with the legislation, that would treat each case seriously, each party with respect, and ensure a fair, just and expeditious resolution of all applications. Its major tasks included drafting new Rules of Procedure, Policies and Practice Directions, developing a robust automated case management system, securing a new home for the HRTO and recruiting staff and adjudicators to deliver the services under the new mandate.

With respect to administrative and operational matters, the Transition Team worked closely with the Ministry of the Attorney General, the Ontario Human Rights Commission and the new Human Rights Legal Support Centre to ensure that the services are aligned to maximize the efficient use of resources, consistent with the legislation.

Building the New HRTO

Community Consultations

Community consultation was critical in designing the new HRTO and ensuring its credibility with all stakeholders. Beginning in the spring of 2006, the Tribunal Chair embarked on extensive consultations. He met with interested individuals, groups and legal practitioners representing the interests of applicants and respondents, as well as experts in the administrative justice community. The HRTO also held a number of more formal consultations across the province.

In addition, the Chair actively sought opportunities to speak at small and large meetings of stakeholder organizations, as well as at legal and educational forums that focused on human rights issues and reforms. At each of these forums, the Chair invited participants to provide feedback on the Tribunal's process through the HRTO website or further in-person meetings.

Town Hall Meetings

In late 2007, the HRTO participated in a series of "town hall" meetings hosted by the Ministry of the Attorney General in a number of locations, including London, Ottawa and Toronto. Notice of these public meetings was sent to nearly 400 individuals and organizations representing the broad stakeholder community, including anyone who identified themselves as having an interest in human rights reform during the legislative reform process. At each meeting, the Chair described the Tribunal's proposed processes and invited input.

Consultation on New Rules of Procedure

The amendments to the Human Rights Code include a provision requiring the Tribunal to "hold public consultations before making a rule." The HRTO consulted broadly on the rules of procedure that would apply to each type of case – new applications, Commission referred cases and transitional applications.

Between July and September 2007, the HRTO held an open consultation on its new rules for Commission referred cases. The HRTO made revisions to its proposed rules based on the input that it received, and adopted the revised rules on January 31, 2008.

At the end of January 2008, the HRTO launched a six-week consultation on its proposed rules for new applications received after June 30, 2008. The HRTO sent e-mail announcements, with links to the HRTO website, to more than 450 individuals and organizations, including everyone who attended the town hall meetings.

The Chair met in person with more than 150 individuals from the stakeholder community across the province, including representatives from:

- community groups,
- disability rights organizations,
- legal and justice organizations,
- business groups, and,
- labour and advocacy groups, including advocacy organizations working with racialized communities, legal clinics and legal practitioners representing both the applicant and respondent communities.

These consultations, conducted in communities across the province, were time consuming and labour intensive, but critical to the transition process.

A New Dispute Resolution Model

The core goal of the new HRTO dispute resolution approach, which will come into effect on June 30, 2008, is to provide early, direct and informed access to a Tribunal Member with substantive and adjudicative expertise to assist in focusing the case to achieve a fair, just and expeditious resolution on the merits.

Mediation will be available throughout the process and can be suggested by the Tribunal, but parties who want to proceed directly to a hearing can do so.

All processes were designed to give effect to the HRTO's core values of accessibility, fairness, transparency, timeliness and the opportunity to be heard.

With the high-level design of the dispute resolution process complete, the next step was to prepare an analytical model to assess the operational requirements of the proposed procedures. PSTG Consulting was retained to work with HRTO staff to develop and document, in detail, process maps for each stage of the process.

This mapping exercise helped the Tribunal determine its budget and staffing requirements. It also provided the background for building an automated case management system to support the Tribunal's work.

Case Management

Because the HRTO expects to receive 3,000 new applications annually, it was clear that it needed a sophisticated, electronic case management system. Following discussions involving the Ministry, Justice Technology Services (JTS) and the HRTO, Work Group Design (WGD) was retained to tailor its case management product – SuitCase – to meet the Tribunal's needs.

Case management for the Commission referred cases and transitional applications will not be handled through SuitCase. Instead, the Tribunal developed a simple case management database to manage this part of its work.

Facilities

Throughout 2007-08, the HRTO worked with the Ministry's Facilities Management Branch and, through them, the Ontario Realty Corporation, on a number of facilities-related projects. In October 2007, the Tribunal adjudicators and support staff relocated from the HRTO corporate offices at 400 University Ave. to new office space at 40 Dundas St. West. The expectation was that this would provide temporary space pending a move to a more permanent location for June 30, 2008.

A key component of the facilities planning, particularly for the public space, was accessibility – one of the HRTO's core values. In addition to being fully accessible, the Tribunal expects to offer advanced features in its hearing rooms including video conferencing and digital audio recording.

The HRTO is planning to move into its new Head Office by mid-June, and expects to have its Hearing and Mediation Centre located at 655 Bay St. open for business by the end of June 2008.

Communications

The transition plan required the development and alignment of communication plans and public communications to support the new HRTO model.

Clear and concise information was needed to promote the new mandate and work of the HRTO and instil confidence. The HRTO worked closely with the Ministry to coordinate communications about the overall Human Rights reforms and to ensure that brochures correctly identify the HRTO's mandate and role under the new system.

Considerable effort was dedicated to coordinating, drafting and editing information and documents on the new human rights process for posting on the HRTO's website. The HRTO plans to have a new dynamic and interactive web site in place for June 2008 that will provide the HRTO's clients and the public with timely and understandable information.

Accessibility of the information on the Tribunal's website has been an important consideration. The Tribunal has consulted and tried to provide information in formats that will be accessible to the broadest range of stakeholders.

Selected HRTO Decisions

2006 - 2007

***Forrester v. Peel (Regional Municipality) Police Services Board (No. 2),* 2006 HRTO 13**

The Tribunal found that the Peel Regional Police Services Board discriminated against a transsexual woman by subjecting her to strip-searches by male officers. This decision is significant for the extensive discussion of transsexuality and the protection of transsexuals under the Code.

The complainant was arrested and strip-searched three times by police officers of the Regional Municipality of Peel. Although she requested female officers perform these searches they were conducted by both male and female officers. Before the Tribunal, the respondent admitted that it had unintentionally violated the Code, and testified it had adopted a new Directive on strip-searching transsexual detainees. The Tribunal proceeded to hear the matter in order to clarify issues of law and to consider issues arising out of the new Directive.

The Tribunal affirmed transsexuality falls within the meaning of "sex" under the Code. It also found the services of the police, including strip-searching detainees, are a public service and, on the facts of this case, the manner in which the complainant was searched was an affront to her dignity and personhood.

The Tribunal went on to review the Directive and identified elements necessary to an appropriate strip-search policy for transsexual detainees. Transsexual detainees must be offered the option of search by male officers only, female officers only, or a split search. An individual may self-identify as a transsexual male or female. If an officer has doubt about the detainee's self-identification, the officer must make notes regarding the reasons for the doubt and may ask certain specified questions. If an officer continues to have doubts regarding the detainee's self-identification the Officer-in-Charge of the Division will be asked to make a final determination. If a detainee is a security risk, officers are permitted to maintain order as they would with any other detainee.

***Braithwaite v. Ontario (Attorney General) (No. 3),* 2006 HRTO 15**

The Ontario Coroner's Act was found to discriminate against persons with mental disabilities because inquests into deaths in custody of involuntary mental patients are discretionary, while inquests into deaths in custody of prison inmates are mandatory. The Tribunal ordered the Chief Coroner of Ontario to conduct

inquests into the deaths in custody of two involuntary mental patients. The decision is significant for its extensive interpretation of the social area of "service" in the Code and its recognition that mental patients are an historically disadvantaged group.

An appeal to the Divisional Court was heard in June 2007. The Court allowed the appeal and dismissed the complaints in December 2007. See *Attorney General for Ontario and Chief Coroner v. OHRC, Braithwaite & Illingworth* 2007, 88 O.R. (3d) 455; leave to OCA refused October 3, 2008.

***Iness v. Caroline Co-operative Homes Inc. (No. 5)*, 2006 HRTO 19**

The respondent Co-op discriminated against the complainant when it amended its rent-to-income ratio for persons in receipt of social assistance, as it believed was required by its federal funder, the Canada Mortgage and Housing Corporation. In doing so the Co-op treated the complaint differently than the "working poor" members of the Co-operative who continued to pay their rent on the established rent-to-income basis. When she complained, the fact that the complainant was in receipt of social assistance became widely known within the Co-op. The Tribunal found a nexus between the rent increase and a loss of dignity.

The Tribunal rejected the respondent's argument that it could not be found liable for discrimination because the requirement was a term of its contract with CMHC. The Tribunal noted the respondent failed to make inquiries about the application of the CMHC requirement, although there was an alternative interpretation that may not have required a rent increase. The Co-op is not an agent of CMHC and cannot escape *Code* liability where it entered into a contract capable of more than one legitimate interpretation.

***Hogan v. Ontario (Ministry of Health and Long-Term Care) (No. 4)*, 2006 HRTO 32**

The Tribunal ruled that the Ontario Minister of Health and Long-term Care did not discriminate by delisting sex reassignment surgery from the Schedule of Benefits ("SOB") paid for under the Ontario Health Insurance Plan ("OHIP"), but nonetheless failed to adequately accommodate three individual complainants.

The majority concludes the decision to de-list was made by Cabinet, and the objective of the government at the time was to maintain its universal and portable health care system for the long term, while tightening and modernizing its services. It made cuts to the OHIP budget in a number of ways. Because of the seriousness of the objective, it was reasonable and bona fide to meet the objective by delisting sex reassignment surgery. However, three of the complainants were part way through their transition from male to female at the time of the delisting. Grandparenting was not a sufficient accommodation

because the process of transitioning is usually a long one and the cut-off date did not give the complainants time to complete it.

The dissent finds the delisting of sex reassignment surgery was discriminatory. Sex reassignment surgery is a legitimate, medically recognized, effective, non-cosmetic treatment of long-standing for transsexuals who have the most profound forms of gender identity disorder. The de-listing decision was made outside of the budgetary "tightening and modernization" review process, and in light of the evidence that Ontario had publicly given as its reason for delisting that transsexuality is a "lifestyle choice", the dissenting Vice-Chair drew the adverse inference that the elimination of the service was tainted by discrimination.

The respondent is appealing this decision to the Divisional Court. See: *Hogan, Stonehouse, A.B. and Andy McDonald v. HMQ (MOHLTC)*, leave to extend time to perfect the appeal has been granted.

***Pridham v. En-Plas Inc.*, 2007 HRTO 8**

The Tribunal found the respondents discriminated against the complainant on the basis of disability when her employment was terminated while she was on leave because of a mental illness.

When the complainant attempted to return to work from an approved leave she was immediately advised her employment was terminated. The respondents took the position that allowing her to return would be unfair to other employees because she might become sick again. The Tribunal found this was discriminatory as it reflected stereotypical assumptions about mental illness rather than an individualised assessment of the complainant's circumstances.

HRTO Decisions 2007 - 2008

***Nassiah v. Regional Municipality of Peel Police Services Board*, 2007 HRTO 14**

The complainant, a black woman, was stopped by a security guard when leaving a retail store and accused of theft. She denied this and the police were called. When the respondent police officer arrived he looked at the complainant and, in her presence, asked the security guard whether she spoke English. He then proceeded to question her in an abusive and threatening manner and required her to be searched. Only after reviewing surveillance videotape was he convinced a mistake had been made.

The Tribunal found the police officer discriminated against the complainant and that the respondent Board had no specific directive prohibiting racial profiling or adequate training regarding racial bias and profiling for new and current officers. The Tribunal directed the Board to introduce a number of measures to promote

compliance with the *Code*. The complainant was also awarded compensation for her lost dignity.

***Lepofsky v. Toronto Transit Commission*, 2007 HRTO 23; 2007 HRTO 41**

These decisions – an interim decision finding that the failure to announce stops on all surface transportation routes was discriminatory to blind passengers and issuing certain directions to the respondent, and the final decision with reasons and further directions – address accessibility of public transportation systems.

The Tribunal ordered wide-ranging public interest remedies including reconfirming its interim order requiring the TTC to ensure that all stops be announced on all bus and streetcar routes, educational seminars for staff and all TTC Commissioners, amending job descriptions to include responsibility for accommodation and accessibility for disabled passengers, review of the proposed automated announcement system and its replacement with driver announcements if not 98 percent effective; and annual public forums on accessible transportation be held with TTC Commissioners and senior management for three years.

***Lane v. AGDA Group Consultants*, 2007 HRTO 34**

The complainant had bipolar disorder, which was not disclosed prior to hiring because of fears it would affect employment opportunities. Within a week of starting work, the complainant met twice with his immediate supervisor to advise her of his condition and to offer to provide further information. Almost immediately after, the complainant was fired on the grounds he could not perform the responsibilities of his job. There was no discussion about his condition or specific needs and no attempt to acquire further information. The respondent employer argued the termination was based on an assessment that the complainant would not be able to handle the stresses of a security sensitive position and might be absent from work during critical periods. The employer also claimed the complainant should be compared to other probationary employees, who could be fired if the company had any doubts about their reliability or regular presence at work.

The Tribunal rejected this argument. Whether discrimination occurred requires determining whether reasonable accommodation was or could have been provided. Here there was a "rush to judgment" without investigation. The respondent failed to fulfill the procedural dimensions of the obligation to accommodate because they did not conduct an appropriate assessment of the complainant's condition or its ability to accommodate. The failure to meet the procedural dimensions of the duty to accommodate – the duty to inquire and assess – is a form of discrimination. While an employer is not precluded from raising after the fact justifications for a failure to accommodate, when the failure to conduct an appropriate assessment has its own adverse consequences, there

exists discrimination for which the complainant has an independent right to a remedy.

The respondents appealed the Tribunal's decision. The appeal was dismissed with minor variations in the public interest remedies on August 8, 2008, leave to appeal was refused by the Court of Appeal November 17, 2008. See *ADGA Group Consultants Inc. v. Lane & OHRC*, 2008 CanLII 39605.

***Seguin v. Great Blue Heron Casino*, 2007 HRTO 33**

The Tribunal found the respondent discriminated when it denied the complainant a position on the basis of her gender. The complaint was hired to clean women's washrooms. A male employee was hired at the same time to clean the men's washrooms. That male employee was awarded a full-time housekeeping position, which involved cleaning the men's washrooms as well as other general housekeeping duties. The respondent denied discriminating against the complainant because it was its position that men must clean the men's washrooms. The Tribunal took no exception to the claim that men should clean the men's washrooms but, where cleaning washrooms was only one of the duties of the housekeepers, it was not satisfied male sex was a bona fide requirement for the housekeeping position. The Tribunal concluded a woman could be accommodated in the job.

The respondent appealed the Tribunal's decision. The Divisional Court upheld the Tribunal's decision discrimination on the basis of sex. See *Great Blue Heron Charity Casino v. Ontario (Human Rights Commission)*, 2008 CanLII 45003

***Chard v. Newton*, 2007 HRTO 36**

The Tribunal found the respondent sexually harassed the complainant during the course of her employment. The respondent made sexualized comments and suggestions and touched her inappropriately on two occasions. The complainant objected and spoke to the general manger. The respondent was reprimanded and a discipline letter was included in his file. No complaint was brought forward to hearing against the company.

***Brown v. Trebas Institute*, 2008 HRTO 10**

The complainant is legally and clinically blind. The respondent is a small, private post-secondary college offering courses in the recording arts, film and television production. The complainant was accepted to the Music Business Administration program. He met with the Admissions Officer to discuss accommodation. When the accommodation was not in place for the beginning of term, he asked for and was granted a deferral. By March 2001, the necessary accommodations were still not in place and a second deferral was requested. This deferral was denied

and he was told that he would have to take a six- to nine-month "cooling off period" and begin the process again.

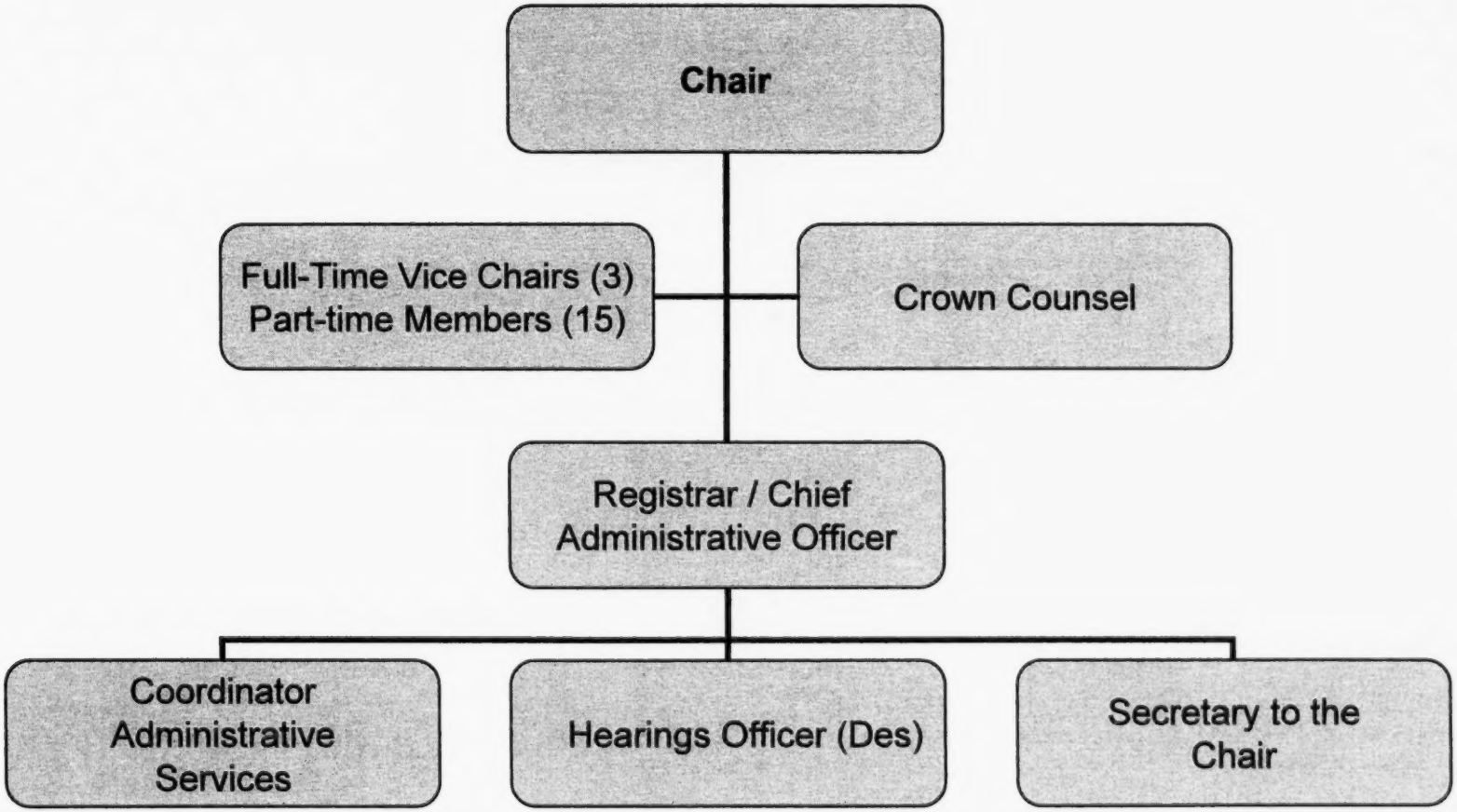
The Tribunal found the respondent failed to take responsibility for or to take meaningful steps to arrange accommodation or provide him with assistance, although they knew he was having difficulty. The respondent had a "one-deferral" policy. Deferrals caused extra paperwork and were sometimes hard to track. However, the policy, and the decision not to grant a second deferral, had a discriminatory effect. There was no evidence assisting Mr. Brown and giving him more time would have caused undue hardship.

APPENDICES

Appendix 1

Organizational Chart
Human Rights Tribunal of Ontario

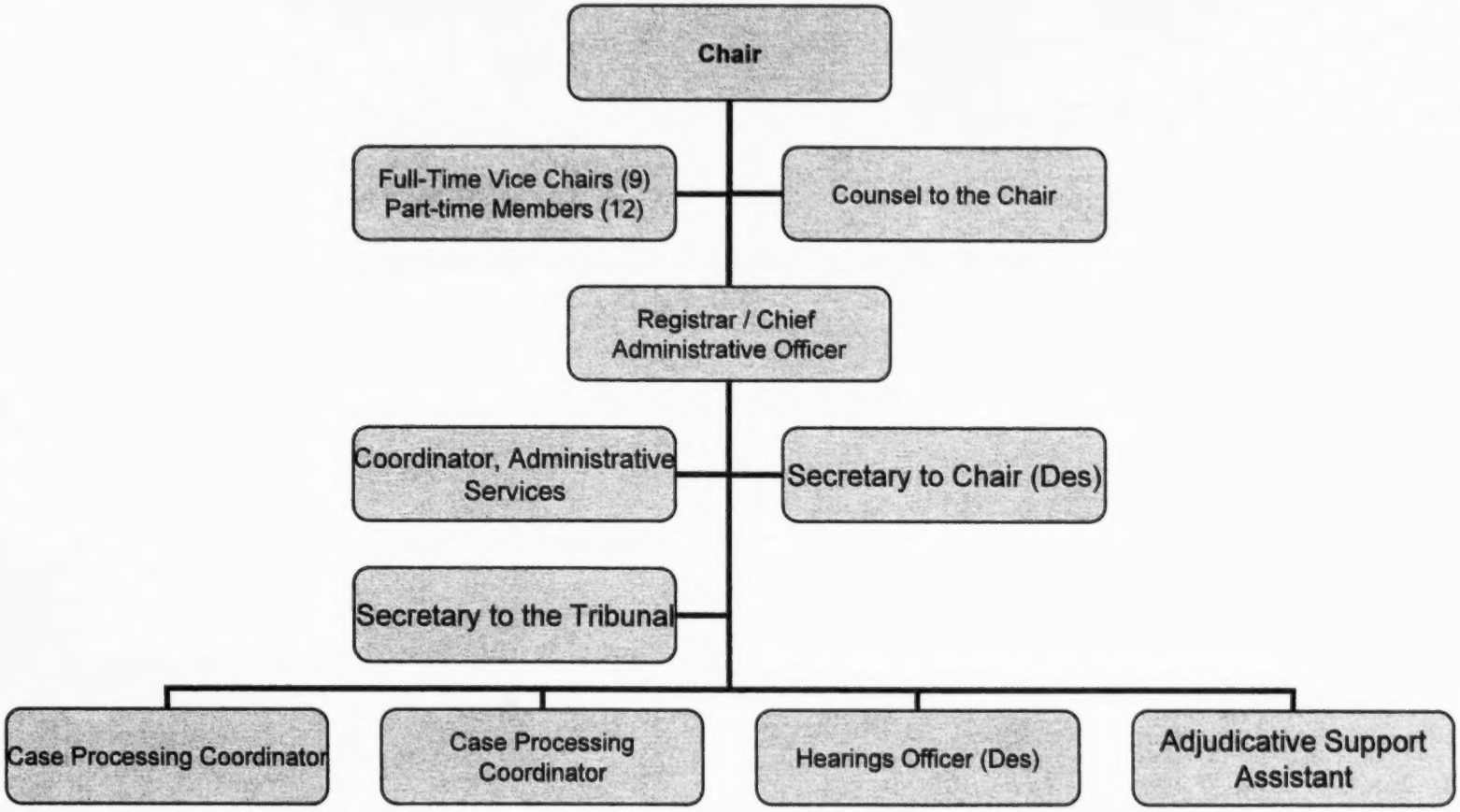
(at March 31, 2007)



Appendix 2

Organizational Chart
Human Rights Tribunal of Ontario

(at March 31, 2008)



Appendix 3

OIC APPOINTMENTS
HUMAN RIGHTS TRIBUNAL OF ONTARIO

(at March 31, 2007)

Position	Appointee	Appointment Dates (From-To)	Original Appointment Dates (From-To)	Notes
Chair	Michael Gottheil	14 Apr 05 - 13 Apr 08		
Full-time Vice-Chairs	Patricia DeGuire	5 May 05 - 4 May 07	5 May 99 - 4 May 05	Cross appointed to PEHT
	Mary Ross Hendriks	14 Apr 05 - 13 Apr 08	14 Jan 02 - 13 Apr 05	
	David Wright	7 Mar 07 - 6 Mar 09		
	Mary Anne McKellar	24 Feb 06 - 24 Feb 09	17 Apr 95 - 23 Feb 06	Cross appointed Vice-Chair OLRB/PEHT/HRTO
Part-time Members	Mark Sandler	17 Feb 06 - 16 Feb 09	17 Feb 99 - 16 Feb 06	
	Laverne Jacobs	22 Dec 05 - 21 Dec 08		
	Sunil Kapur	28 Jun 06 - 27 Jun 09		
	David Osborn	28 Jun 06 - 27 Jun 09		
	Jennifer Scott	17 Jul 06 - 16 Jul 09		
	Alvin Rosenberg	4 Feb 04 - 3 Feb 07	30 Oct 00 - 30 Oct 03	
	Ajit Jain	30 Mar 06 - 29 Mar 07	30 Mar 99 - 29 Mar 06	
	Kaye Joachim	22 Dec 05 - 21 Dec 08		
	Kathleen Martin	28 Jun 06 - 27 Jun 09		
	David Mullan	24 Feb 06 - 23 Feb 07	24 Aug 98 - 23 Feb 06	
	Peter Cory	18 Feb 04 - 18 Feb 07		
	Ian Anderson	26 Oct 05 - 25 Oct 08		Cross appointed from OLRB
	Caroline Rowan	26 Oct 05 - 25 Oct 08		Cross appointed from OLRB
	Susan Serena	26 Oct 05 - 25 Oct 08		Cross appointed from OLRB

OIC APPOINTMENTS
HUMAN RIGHTS TRIBUNAL OF ONTARIO

(at March 31, 2008)

Appendix 4

Position	Appointee	Appointment Dates (From-To)	Original Appointment Dates (From-To)	Notes
Chair	Michael Gottheil	14 Apr 08 -13 Apr 13	14 Apr 05 - 13 Apr 08	
Full-time Vice-Chairs	David Wright	7 Mar 07 - 6 Mar 09		
	Leslie Reaume	27 Jun 07 - 26 Jun 09		
	Brian Eyolfson	13 Aug 07 - 12 Aug 09		
	Kaye Joachim	4 Sep 07 - 3 Sep 09		
	Kathleen Martin	4 Sep 07 - 3 Sep 09		
	Keith Brennenstuhl	4 Sep 07 - 3 Sep 09		
	Mark Hart	4 Sep 07 - 3 Sep 09		
	Sherry Liang	4 Sep 07 - 3 Sep 09		
	Ena Chadha	4 Sep 07 - 3 Sep 09		
	Mary Anne McKellar	24 Feb 06 - 24 Feb 09	17 Apr 95 - 23 Feb 06	Cross appointed as Vice-Chair to OLRB/PEHT/HRTO
Part-time Members	Mark Sandler	17 Feb 06 - 16 Feb 09	17 Feb 99 - 16 Feb 06	
	Laverne Jacobs	22 Dec 05 - 21 Dec 08		
	Sunil Kapur	28 Jun 06 - 27 Jun 09		
	David Osborn	28 Jun 06 - 27 Jun 09		
	Jennifer Scott	17 Jul 06 - 16 Jul 09		
	Alvin Rosenberg	4 Feb 07 - 3 Feb 12	30 Oct 00 - 3 Feb 07	
	Ajit Jain	30 Mar 07 - 29 Mar 12	30 Mar 99 - 29 Mar 07	
	Joseph Radocchia	4 Sep 07 - 30 Sep 09		
	Ian Anderson	26 Oct 05 - 25 Oct 08		Cross appointed from OLRB
	Caroline Rowan	26 Oct 05 - 25 Oct 08		Cross appointed from OLRB
	Susan Serena	26 Oct 05 - 25 Oct 08		Cross appointed from OLRB

HUMAN RIGHTS TRIBUNAL OF ONTARIO
2006/2007 FINANCIAL REPORT

Appendix 5

Standard Account	MBC Approved Budget	Total Actual Expenditure	Variance	% of Budget Spent	Variance Explanation
Salary & Wages	$ 713.30	$ 749.40	-$ 36.10	-5%	
Benefits	$ 91.90	$ 63.80	$ 28.10	31%	
Transportation & Comm.	$ 59.20	$ 62.40	-$ 3.20	-5%	
Services	$ 245.10	$ 176.10	$ 69.00	28%	
Supplies	$ 17.90	$ 17.60	$ 0.30	2%	
Total ODOE	$ 322.20	$ 256.10	$ 66.10	21%	
TOTAL	**$ 1,127.40**	**$ 1,069.30**	**$ 58.10**	**5%**	

All figures in $000.0 thousand

HUMAN RIGHTS TRIBUNAL OF ONTARIO
2007/2008 FINANCIAL REPORT

Appendix 6

Standard Account	MBC Approved Budget	Total Actual Expenditure	Variance	% of Budget Variance	Variance Explanation
Salary & Wages	$ 2,008.80	$ 1,972.00	$ 36.80	2%	
Benefits	$ 200.90	$ 194.60	$ 6.30	3%	
Transportation & Comm.	$ 100.00	$ 94.50	$ 5.50	6%	
Services	$ 764.10	$ 802.40	-$ 38.30	-5%	
Supplies	$ 171.40	$ 139.20	$ 32.20	19%	
Total ODOE	$ 1,035.50	$ 1,036.10	-$ 0.60	0%	
TOTAL	**$ 3,245.20**	**$ 3,202.70**	**$ 42.50**	**1%**	

The approved HRTO budget for 2007 2008 includes HRTO regular staff, transition staff and and IT budget.

All figures in $000.0 thousand